

WAC 458-20-122 Sales of feed, seed, fertilizer, spray materials, and other tangible personal property for farm use.

(1) **Introduction.** This section explains the application of Washington's B&O and retail sales taxes to sales of feed, seed, fertilizer, spray materials, and other tangible personal property for farm use. Farmers and persons making sales to farmers may also want to refer to the following sections of chapter 458-20 WAC:

(a) WAC 458-20-209 (Farming for hire and horticultural services performed for farmers);

(b) WAC 458-20-210 (Sales of agricultural products by farmers); and

(c) WAC 458-20-239 (Sales to nonresidents of farm machinery or implements).

(2) **Definitions.** For the purposes of this section, the following definitions apply:

(a) "Feed" means any substance used as food to sustain or improve animals, birds, fish, or insects, and includes whole and processed grains or mixtures thereof, hay and forages or meals made therefrom, mill feeds and feeding concentrates, stock salt, hay salt, bone meal, cod liver oil, double purpose limestone grit, oyster shell, and other similar substances. "Feed" includes food additives which are given for their beneficial growth or weight effects. However, "feed" does not include hormones or similar products which do not make a direct nutritional or energy contribution to the body, nor does it include products which are used as medicines.

(b) "Seed" means propagative portions of plants, commonly used for seeding or planting whether true seeds, bulbs, plants, seedlike fruits, seedlings, or tubers.

(c) "Fertilizer" means any substance containing one or more recognized plant nutrients and which is used for its plant nutrient content and/or which is designated for use in promoting plant growth. "Fertilizer" includes limes, gypsum, and manipulated animal and vegetable manures.

(d) "Spray materials" means any substance or mixture of substances in liquid, powder, granular, dry flowable, or gaseous form, which is intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, mollusk, fungus, weed, and any other form of plant or animal life which is normally considered to be a pest. The term includes treated materials, such as grains, which are intended to destroy, control, or repel such pests. "Spray materials" also includes substances which act as plant regulators, defoliants, desiccants, or spray adjuvants.

(e) "Farmer" means any person engaged in the business of growing or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product whatsoever for sale. "Farmer" does not include a person using such products as ingredients in a manufacturing process, or a person growing or producing such products for the person's own consumption. The term does not include a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard, slaughter or packing house. "Farmer" does not include any person in respect to the business of taking, cultivating, or

raising timber. RCW 82.04.213.

(f) "Agricultural product" means any product of plant cultivation or animal husbandry including, but not limited to a product of horticulture, grain cultivation, vermiculture, or viticulture. "Agricultural product" includes plantation Christmas trees, animals, birds, insects, or the substances obtained from such animals. RCW 82.04.213. On and after July 1, 1993, "agricultural product" includes products of "aquaculture" and animals that are "cultured aquatic products," as those terms are defined by RCW 15.85.020. Also effective July 1, 1993, "turf" was added to the definition of "agricultural product," and "animals intended to be pets" were specifically excluded. (See chapter 25, Laws of 1993 sp.s.)

(3) **Business and occupation tax.** Persons making sales of tangible personal property or services to farmers are generally subject to the business and occupation tax thereon. The B&O tax applies as follows:

(a) **Wholesaling.** Persons who make sales at wholesale are subject to the wholesaling B&O tax upon the gross proceeds from such sales. Sellers must obtain resale certificates from their customers to support the resale nature of any transaction. (Refer to WAC 458-20-102.) The following are examples of sales at wholesale:

(i) Sales of tangible personal property to farmers when such property is purchased for resale or is a container or will become part of a container to be resold with products produced for sale.

Thus, sales of grain sacks which are resold with grain produced, sack twine used in binding such sacks, wire or twine for binding bales of hay and alfalfa which are sold, fruit and vegetable wrappers, and similar items are wholesale sales. (See also WAC 458-20-115, Sales of packing materials and containers.)

(ii) Sales to farmers of feed, seed, fertilizer, spray materials, and agents for enhanced pollination, including insects such as bees, for the purpose of producing an agricultural product for wholesale or retail sale. However, wholesale sales of certain unprocessed grain and legumes to farmers for use as feed may be taxable at a lower rate under the wholesaling wheat, oats, corn, barley, dry peas, dry beans, lentils, triticale B&O tax classification. (Refer to WAC 458-20-161.)

(iii) Sales of feed, seed, fertilizer, spray materials, and agents for enhanced pollination, including insects such as bees, to persons who will resell the same without intervening use.

(iv) Sales of chemical sprays or washes to persons for the purpose of post-harvest treatment of fruit for the prevention of scald, fungus, mold, or decay.

(v) Sales to farmers of fertilizer or spray materials by persons spraying crops for hire, provided the charge for the fertilizer or spray materials is made separate and apart from the charge for the application of the spray. (See also WAC 458-20-209.)

(b) **Retailing.** Sales of tangible personal property to farmers are generally retail sales and subject to the retailing tax. The following are examples of retail sales:

(i) Sales of tangible personal property when the property is not a packing material or container which is resold with products produced for sale. For example, sales to farmers of binder twine or wire are retail sales when the hay, alfalfa, or similar item

will not be resold, but will be used to feed the farmer's cattle.

(ii) Sales to farmers of tangible personal property which will be resold by the farmer, but which is put to intervening use prior to resale. For example, sales of litter, and the ingredients thereof, are sales for consumption and subject to the retailing tax even though the litter after use is resold or used as fertilizer.

(iii) Sales to farmers of machinery, machinery parts and repair, tools, and cleaning materials.

(iv) Sales of feed, seed, fertilizer, and spray materials to consumers for purposes other than producing agricultural products for sale. The following sales of feed, seed, fertilizer, and spray materials are retail sales:

(A) Sales of feed to riding clubs, race track operators, boarders, or similar persons who do not resell the feed at a specific charge.

(B) Sales of feed for feeding pets and work animals, or for raising poultry, eggs, or other products for personal consumption.

(C) Sales of seed, fertilizer, and spray materials for use on lawns, gardens, or any other personal use.

(D) Sales of fertilizers and spray materials to persons who spray agricultural crops and other real property for hire, unless these items will be resold for a charge separate and apart from charges for the actual spreading of the fertilizer or spray materials, in which case the sale is a wholesale sale. (See also WAC 458-20-209.)

(4) **Retail sales tax.** The retail sales tax generally applies to those sales identified above as being subject to the retailing B&O tax. However, a retail sales tax exemption is available for the following:

(a) Sales of feed for feeding livestock at public livestock markets. RCW 82.08.0296.

(b) Sales of pollen. RCW 82.08.0277.

(c) Sales of semen for use in the artificial insemination of livestock. RCW 82.08.0272.

(d) Sales of purebred livestock for breeding purposes where the animals are registered in a nationally recognized breed association. RCW 82.08.0259. Sellers claiming this exemption should refer to subsection (6) of this section for a description of the required documentation which must be retained by the seller.

(e) Sales of beef and/or dairy cattle for use by a farmer in producing an agricultural product. RCW 82.08.0259.

(f) Sales of poultry for use in the production for sale of poultry or poultry products. RCW 82.08.0267.

(g) Auction sales made by or through auctioneers of tangible personal property (including household goods) which has been used in conducting a farm activity, when the seller thereof is a farmer and the sale is held or conducted upon a farm. RCW 82.08.0257.

(h) Lease of irrigation equipment, provided:

(i) The irrigation equipment was purchased by the lessor for the purpose of irrigating land the lessor controlled;

(ii) The lessor has paid retail sales or use tax upon the irrigation equipment;

(iii) The irrigation equipment is attached to the land in

whole or in part; and

(iv) The irrigation equipment is leased to the lessee as an incidental part of the lease of the underlying land, and is used solely on such land. RCW 82.08.0288.

(5) **Deferred sales or use tax.** If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the deferred sales or use tax directly to the department. If a deferred sales or use tax liability is incurred by a farmer who is not required to obtain a tax registration endorsement with the department of revenue (see WAC 458-20-101), the farmer must remit the appropriate tax upon a return to be filed with the department of revenue. This return must be filed on or before the twenty-fifth day of the month succeeding the end of the period in which the tax accrued. Forms and instructions for making returns will be furnished upon request made to the department at Olympia or to any of its branch offices.

(6) **Purebred livestock exemption certificate.** RCW 82.08.0259 provides a retail sales tax exemption for sales of purebred livestock for breeding purposes. To perfect a claim for this exemption, the seller must retain as a part of its records a copy of an exemption certificate, which is to be completed at the time of sale. This certificate must be substantially in the following form, and completed in its entirety:

Date of sale:
Seller's name:
Buyer's name:
Address of buyer:
Registered name of animal:
Registering breed association:
Purebred type:

I certify that the purebred animal named on this certificate is being purchased by me for breeding purposes.

Buyer's signature, Title:

(7) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(a) B Orchards is a commercial tree fruit grower which purchases substances which qualify as fertilizers. These substances are sprayed directly onto the tree leaves. B Orchards may purchase these fertilizers at wholesale, provided it gives the seller a resale certificate. There is no requirement that fertilizers be applied directly to the soil.

(b) AC Timber uses various pesticides to control weeds and pests in its stands of timber. These pesticides qualify as spray materials. AC must pay retail sales tax upon the purchase of these spray materials. AC Timber does not satisfy the statutory definition of "farmer."

(c) Bob Smith grows vegetables for retail sale at a local market. Bob purchases fertilizers and spray materials which he applies to the vegetable plants. Bob also purchases feed for poultry which he raises to produce eggs for his personal consumption. As the vegetables are an agricultural product produced for sale, retail sales tax does not apply to his

purchase of the fertilizers and spray materials. Retail sales tax does apply to Bob's purchase of poultry feed, as the poultry is raised to produce eggs for Bob's personal consumption.

(d) DG Vineyards grows grapes which it uses to manufacture wine for sale. DG purchases pesticides and fertilizers which it applies to its vineyards. DG Vineyards must remit retail sales tax upon the purchase of the pesticides and fertilizers. The statutory definition of "farmer" excludes persons raising agricultural products which they use as ingredients in a manufacturing process.

(e) John Doe operates a farm where he raises cattle for sale. John Doe raises his own hay which he bales and later uses as feed for his cattle. He is required to pay retail sales or use tax on the wire or twine he uses in baling the hay since he is the consumer of the wire or twine. If he were to sell the baled hay, he could give a resale certificate for these purchases. [Statutory Authority: RCW 82.32.300. 94-07-049, ' 458-20-122, filed 3/10/94, effective 4/10/94; 86-21-085 (Order ET 86-18), ' 458-20-122, filed 10/17/86; 86-09-058 (Order ET 86-7), ' 458-20-122, filed 4/17/86; Order ET 70-3, ' 458-20-122 (Rule 122), filed 5/29/70, effective 7/1/70.]